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PCT LEGAL ADMINISTRATION

In re Application of	:	
RUFO, et al.	:	DECISION ON PETITION
U.S. Application No.: 10/572,667	:	
PCT No.: PCT/US2004/030813	:	UNDER 37 CFR 1.78(a)(6)
Int. Filing Date: 20 September 2004	:	
Priority Date: 18 September 2003	:	
Atty Docket No.: C0875.70019US02	:	
For: TREATMENT OF SEVERE DISTAL COLITIS	:	

This is a decision on the petition under 37 CFR §1.78(a)(6), filed 29 September 2010, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment and supplemental application data sheet (ADS).

The petition is **DISMISSED AS MOOT**.

MPEP 201.11, Section V, states in relevant part,

If an applicant includes a claim to the benefit of a prior application elsewhere in the application but not in the manner specified in 37 CFR 1.78(a)(2)(i) and (a)(2)(iii) or 37 CFR 1.78(a)(5)(i) and (a)(5)(iii) (e.g., if the benefit claim is included in an unexecuted oath or declaration or the application transmittal letter) within the time period set forth in 37 CFR 1.78(a)(2)(ii) or (a)(5)(ii), the Office will not require a petition and the surcharge under 37 CFR 1.17(t) to correct the benefit claim if the information concerning the benefit claim contained elsewhere in the application was recognized by the Office as shown by its inclusion on a filing receipt. This is because the application will have been scheduled for publication on the basis of such information concerning the benefit claim.

In the present case, applicant included a benefit claim to the prior provisional application in the international application but not in the manner specified in 37 CFR 1.78(a)(5)(iii). Because the claim appeared on the initial filing receipt, a petition under 37 CFR 1.78(a)(6) is not required.

In view of the above, the \$1410.00 petition fee submitted is unnecessary and will be refunded to petitioner in due course.

Applicant is advised that a benefit claim must still be submitted in the manner specified in 37 CFR 1.78(a)(5)(i) and (a)(5)(iii) (i.e., by an amendment in the first sentence(s) of the specification or in an ADS) to have a proper claim under 35 U.S.C. 119(e) and 37 CFR 1.78 to the benefit of the prior application. See MPEP 201.11, Section V. In the present case, a proper benefit claim has not been submitted. Specifically, the supplemental application data sheet lacks

the signature required under 37 CFR 1.33(b) and 10.18. A signature on an accompanying cover letter is insufficient. Applicant may wish to refer to the most recent version of Form PTO/SB/14 (http://www.uspto.gov/ebc/portal/efs/sb0014_fill.pdf) which contains an appropriate signature block. Additionally, the proposed amendment to the first paragraph of the specification is improper because it incorporates by reference an application which was not incorporated on filing.

Any questions concerning this decision on petition may be directed to Derek A. Putonen at (571) 272-3294. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to the Examiner of Technology Center AU 1628 for examination.



Bryan Lin
PCT Legal Examiner
Office of PCT Legal Administration